



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 17, 2003

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2003-1789

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178270.

The Dallas Police Department (the "department") received a request for departmental "records that document each of the checks of [the requestor's] driving license documented in the column entitled 'DPS Off-line search'" for specified dates and times in May, 2001. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin by noting that the submitted documents contain checks on driver's licenses of individuals other than the requestor. Such information is not responsive to the present request, and this ruling will not address that information.

We next note that the requestor has provided this office with copies of documents that correspond to documents that you submitted. Thus, the department appears to have released some of the requested information. We note that section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

by law. *See* Gov't Code § 552.007; *but see* Gov't Code § 552.352 (imposing criminal penalties for release of confidential information). You do not otherwise claim that the requested information is confidential by law.² Thus, to the extent that the requested information has previously been released, the department may not withhold that information from the requestor.

We next address your argument that section 552.108 of the Government Code excepts from disclosure the remaining requested information. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.--Austin, Sept. 12, 2002) (No. 03-02-00074-CV)(Section 552.108(b)(1) protects "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State."). This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To demonstrate the applicability of this aspect of section 552.108, a governmental body must explain, if the requested information does not supply an explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 508 at 4 (1988). Further, section 552.108(b)(1) does not protect information that relates to commonly known policies and techniques. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

You state that the submitted documents relate to searches generated by the National Crime Information Center ("NCIC") on various individuals, and that "release of such documents would reveal which subjects are being investigated, whether or not they are actually suspects." You further assert that "[r]elease of this information would provide the listed individuals with the distinct advantage in efforts of avoiding detection and apprehension by law enforcement." We find, however, that the department has failed to show that the release of the submitted information would interfere with law enforcement or crime prevention

²Section 552.108 of the Government Code does not make information confidential or prohibit its release. Open Records Decision No. 177 (1977).

under section 552.108(b)(1). *See* Gov't Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). Consequently, we conclude that the information at issue is not excepted from public disclosure under section 552.108(b)(1).

We note that criminal history record information ("CHRI") generated by the NCIC or by the Texas Crime Information Center ("TCIC") is confidential.³ Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

You state that the information submitted for our review was generated by NCIC. Based upon our review of the submitted information, however, we find that it does not contain CHRI. *Cf.* Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information). Therefore, the information at issue is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 411.083, and, thus, must be released to the requestor.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov't Code §§ 552.130, 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

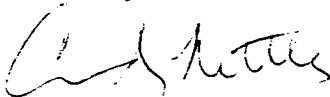
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 178270

Enc. Submitted documents

c: Mr. Jay Cooper
1520 Janwood Drive
Plano, Texas 75075
(w/o enclosures)